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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN FRANCISCO ROMAN,

Defendant and Appellant.

2d Crim. No. B204534  
(Super. Ct. No. 1275781)  
(Santa Barbara County)

Juan Francisco Roman appeals his conviction by jury of felony evading an officer (count 1; Veh Code, § 2800.2, subd. (a)), resisting an executive officer (count 2; Pen. Code, § 69)<sup>1</sup>, giving false information to a police officer (count 3; § 148.9, subd. (a)), and battery (count 4; § 242). In a bifurcated proceeding, the trial court found that appellant had suffered a prior strike conviction under the Three Strikes law (§§ 667, subd. (d)(1)–(e)(1); 1170.12, subds. (b)(1)–(c)(1)), and had served two prior prison terms within the meaning of section 667.5, subdivision (b). Appellant was sentenced to eight years state prison. We affirm.

*Facts*

On the morning of June 11, 2007, Santa Maria Police Officer Alex George

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<sup>1</sup> Unless otherwise stated, all statutory references are to the Penal Code.

saw appellant parked in a 1991 Toyota Camry that was reported stolen. Officer George made a felony stop, drew his firearm, and ordered appellant to put his hands up.

Appellant sped off with Officer George in pursuit. Driving 45 miles per hour and accelerating through a residential area, appellant ran a stop sign and made an unsafe turn into a driveway.

Officer George stopped behind the Toyota and ordered appellant to put his hands up. Grabbing appellant's left hand, the officer tried to restrain appellant. Appellant struggled and started to climb out. Officer George struck him in the face and ordered him not to move.

Appellant jumped out the car window, swung at the officer, and ran. A neighbor, Tim Whaley, tried to block appellant but was punched in the eye.

Appellant continued running, tried to jump a fence, and fell. Officer George hit appellant on the legs and restrained him until back up officers arrived.

Appellant was transported to the hospital before booking and gave two false names. It was later determined that appellant was on parole and "a high control, escape risk . . . ."

Officer George's account of the events was corroborated by Whaley and a video tape. The police car was equipped with a video camera that filmed the traffic stop and chase.

#### *Motion to Reduce Felony Convictions to Misdemeanors*

Appellant argues that the trial court abused its discretion in not reducing the felony offenses to misdemeanors pursuant to section 17, subdivision (b).<sup>2</sup> Evading an officer and obstruction of an officer are wobbler offenses, which in the trial court's discretion, may be punished as felonies or misdemeanors. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 974-975.)

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<sup>2</sup> The trial court imposed concurrent, three-year upper terms on counts 1 and 2, doubled the terms based on the prior strike conviction, and added two years on the prior prison term enhancements. On the misdemeanor counts for battery and giving false information to an officer, appellant was sentenced to concurrent six month terms.

In order to reduce a wobbler to a misdemeanor, the trial court must consider "all relevant factors, including the defendant's criminal past and public safety . . . ." (*Id.*, at pp. 981-982.) The trial court also considers " 'the nature and circumstances of the offense, the defendant's appreciation of and attitude toward the offense, or his traits of character as evidenced by his behavior and demeanor at the trial.' [Citations,]" (*Id.*, at p. 978.)

Appellant argues that the felony offenses did not involve violence, great bodily harm, or a victim. Appellant asserts that the officer provoked the incident when he drew a firearm and made a felony stop. Appellant further claims that the car chase lasted less than a minute and that he used minimum force to escape.

The trial evidence paints a very different picture. Appellant refused to obey the officer, started the car, and led the officer on a dangerous chase through a residential area. After appellant ran a stop sign and turned into a driveway, he defied the officer's orders. Appellant climbed out the car window, wrestled the officer, and punched a civilian. Appellant claimed that he did not know it was the police even though the officer was in uniform and driving a marked patrol car with the siren and red lights activated.

The trial court, in denying the motion to reduce the offenses to misdemeanors, found that appellant had numerous and serious prior convictions, that appellant was on parole, and that appellant had engaged in violent conduct and posed a serious danger to society.

Appellant asserts that the trial court failed to state its reasons in denying the motion to reduce the felony offenses to misdemeanors. Appellant, however, did not object or ask for clarification. "[C]omplaints about the manner in which the trial court exercises its sentencing discretion and articulates its supporting reasons cannot be raised for the first time on appeal." (*People v. Scott* (1994) 9 Cal.4th 331, 356.)

Waiver aside, appellant argues that the trial court must make "a reasoned consideration" of appellant's criminal past and public safety (*People v. Dent* (1995) 38 Cal.App.4th 1726, 1731), and that "the record must so reflect." (*People v. Superior Court (Alvarez)*, *supra*, 14 Cal.4th at p. 982.) Specific findings are required where the trial court

grants a motion to reduce a wobbler to a misdemeanor. (*Ibid.*) *People v. Alvarez, supra*, however, does not require the trial court explain a decision not to reduce a wobbler to a misdemeanor. (*Id.*, at pp. 981-982.)

In view of the violent nature of the current offense and appellant's extensive criminal record which includes a prior manslaughter conviction involving the use of a firearm, and appellant's poor performance on parole, the trial court did not abuse its discretion in denying the motion to reduce the felony convictions to misdemeanors. (Cf. *People v. Williams* (1998) 17 Cal.4th 148, 162-164.) Absent a showing the sentence is unreasonable, the trial court is presumed to have acted "to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review." [Citation.] (*People v. Superior Court (Alvarez), supra*, 14 Cal.4th at pp. 997-978.)

#### *Motion to Strike Prior Strike Conviction*

Appellant asserts that the trial court erred in denying his motion to strike the prior strike conviction in the interests of justice. (§ 1385, subd. (a): *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 531.) Striking a serious felony conviction is an extraordinary exercise of discretion, reserved for extraordinary circumstances. (*People v. Strong* (2001) 87 Cal.App.4th 328, 332.)

Given the aggravated nature of the offenses and appellant's background, character and prospects, the trial court acted well within its discretion in denying the motion to strike. (*People v. Carmony* (2004) 33 Cal.4th 367, 378-379.) Appellant showed little remorse and attempted to minimize the offense, claiming that he "had no idea it was the police." It was uncontroverted that appellant defied the officer's commands, wrestled the officer, and punched a civilian. After he was arrested, appellant gave the police two false names.

The probation report recommended the maximum sentence and stated that appellant, age 33, has a criminal history that "spans over the course 14 years, and includes serious offenses such as voluntary manslaughter involving a firearm, carrying a concealed

weapon, carrying a loaded firearm in a public place, possessing controlled substances while armed and vehicle theft. He has also suffered several parole violations. Clearly, the defendant is a serious danger to society as he refuses to change his behavior and comply with legal and social norms."

The trial court reasonably concluded that appellant was a continuing threat to the community and should be sentenced as a second strike offender. We believe it would have been an abuse of discretion to strike the prior serious felony conviction. (See e.g., *People v. Williams, supra*, 17 Cal.4th at pp. 163-164; *People v. Humphrey* (1997) 58 Cal.App.4th 809, 813.) Appellant "is the kind of revolving-door career criminal for whom the Three Strikes law was devised." (*People v. Gaston* (1999) 74 Cal.App.4th 310, 320.)

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

Barry Hammer, Judge  
Superior Court County of Santa Barbara

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